IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.695 OF 2005

Gena Parsu Mungase .. Appellant

Versus

Bapu Parsu Mungase .. Respondent

Mr.Ambar Joshi for appellant

CORAM : P.V.KAKADE, J.

DATE : 8TH AUGUST, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Addl. District Judge, Pandharpur dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Mangalwedha dismissing the plaintiff’s suit for perpetual injunction simplicitor.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff had filed the suit for injunction simplicitor preventing the defendant from causing obstruction and interference into the plaintiff's possession over the suit land. The plaintiff came with the case that the land of block Nos.105 and 110 were the suit properties and block No.105 was exclusively owned by him and there were three separate shares in block no.110 including himself and he was holding separate possession of 1/3rd share in the suit property. The defendant contested the suit on various grounds, inter alia, submitting that though the partitions were effected of the said properties and therefore, plaintiff was not holding separate share therein and as such the suit was sought to be dismissed.

. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove the exclusive possession over the suit land and as such the suit for injunction came to be dismissed. The appeal was carried to the District Court. The Addl. District Judge, after hearing both the parties confirmed the findings recorded by the trial court and dismissed the appeal. Hence the present

appeal.

4. At the outset, it must be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant submitted that so far as land of block no.110 is concerned there were previous partitions and the appellant was 1/3rd separate share therein along with defendant and one Namdeo. He has also come with the theory that there were oral partitions due to which the land were divided. However, there is absolutely no evidence on record to show that there was partition nor there is any evidence to show that the land of block no.105 is exclusively owned by him by virtue of such partitions. Similarly, there is no evidence on record to show that he is separately holding share of land 110 and though admittedly the property was subjected to partition amongst the brothers. It is to be noted that there are in all seven brothers and no explanation has come to show as to what happened to the share of remaining brothers. In view of this position, both the courts below have come to the conclusion that the plea for perpetual injunction against the defendant is made by the plaintiff deserves to be dismissed. I do not find any reason why these

concurrent findings recorded by both the courts below should be interfered. In the result appeal stands dismissed.